IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 7919 OF 1992
TO
SPECIAL CIVIL APPLICATION NO. 7921 OF 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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RATILAL JAGANBHAI KAMLI - Petitioner(s)
Versus
STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Shri Daxesh T. Dave for Petitioner(s).
Shri Hukum Singh, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/02/2007

COMMON ORAL JUDGMENT

This judgement shall dispose of Special Civil Application Nos.7919 of 1992, 7920 of 1992 and 7921 of 1992.

2. The land bearing Survey No.9 of Village-Khatalvada, Taluka: Umergaon, District: Valsad, was owned by Ukadbhai Jivanbhai, Maganbhai Jivanbhai, Ravji Budhiya and Lasuben Kalidas. After the death of Ravji Budhia, his son Jagan Ravji sold 7 Gunthas of land for a sum of Rs.1,001/- by an unregistered Sale Deed to the present petitioners. Ukad Jivanbhai made an application to respondent No.2 - Mamlatdar to make an inquiry into the matter. The matter came to the Deputy Collector, who in Case No. LND/NT/3/86, held that there were violations of the conditions attached to the new tenure. He, accordingly, directed that the present petitioners be evicted and the land be forfeited in favour of the Government. The said order was not challenged by the present petitioners, but, it came to be challenged by Ukad Jivanbhai, Maganbhai Jivanbhai, by way of an appeal before the Collector, Valsad. The said appeal, being Appeal No.9 of 1988, was dismissed on the ground that it was barred by limitation. The said order of the Collector came to be challenged in the revision at the instance of Ukad Jivanbhai and Maganbhai Jivanbhai. The revision was heard by the Additional Secretary (Revenue), who partly allowed the revision, confirmed the orders passed by the Deputy Collector and the Collector, but, however, made observations that procedure under Section 61 of the Bombay Land Revenue Code be followed. Thereafter, the Circle Inspector-Umergaon issued letters to the petitioners to remain in attendance on 29th October, 1991 and thereafter, on 10th February, 1992. The matter was heard by the Mamlatdar, who directed that the petitioners be evicted from the premises, the case was numbered as LND/Vashi/574/92. The petitioners now aggrieved by the order dated 5th November, 1992 passed by the Mamlatdar, directing eviction of the petitioners, are before this Court.

3. The learned Counsel for the petitioners had made various

submissions on the merits of the matter.

4. From the facts, it would clearly appear that the first order dated 24th September, 1986 passed by the Deputy Collector - Valsad, directing eviction of the petitioners, was never challenged by the petitioners and they allowed the said order to become final. Once they had accepted the said order, then at their instance, an argument cannot be raised that the order dated 24th September, 1986 passed by the Deputy Collector or the order passed by the Collector in Appeal No.9 of 1988 on 31st July, 1989, or the order passed by the Additional Secretary (Revenue) on 29th November, 1989 are wrong.

5. So far as the question of eviction of the petitioners from the land in dispute is concerned, it has attained finality. The only question required to be considered by the Mamlatdar under the directions of the Additional Secretary (Revenue), was to see that what should be done under Section 61 of the Bombay Land Revenue Code. If the Mamlatdar had observed the directions issued by the Additional Secretary (Revenue) and has again made an order of eviction, then, under the circumstances, the present petitioners, who never challenged any of the orders passed by the authorities, cannot be allowed to challenge the order passed in the proceedings under Section 61, that too, directly in the High Court.

6. In the result, each of the petitions is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No costs.

[R.S.Garg, J.]

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